

THE HON'BLE SRI JUSTICE V.V.S.RAO

-
WRIT PETITION No.3147 of 2007

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Dated:28.02.2007

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Between:

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Bezavada Govinda Reddy.

...Petitioner

and

The Government of Andhra Pradesh, rep.by its Secretary, and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION No.3147 of 2007

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ORDER:

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In this Writ Petition the petitioner a resident of Vidavaluru Village and Mandal in Nellore District assails a Government Memo dated 12.10.2006 and the consequential order of the third respondent wherein the fourth respondent was directed to remove the petitioner from the encroachment in Survey Nos.203 and 207 of Vidavaluru Village and restore donka (pathway).

Briefly stated, the case of the petitioner is that he is the owner of land admeasuring Ac.0.78 cents in Survey No.208 and Ac.0.98 cents in Survey No.209 having purchased under registered sale deed dated 09.12.1983, that he is in possession of the land and cultivating the same. He alleges that one M.Prabhakar Reddy, who is the owner of land in Survey Nos.225, 226 and 227 tried to convert the irrigation channel in Survey Nos.203 and 207 as donka. This was resisted by the petitioner and others. Out of grudge, the said Prabhakar Reddy gave a complaint to the fourth respondent, who initiated action and issued a notice proposing to conduct enquiry under Section 145 of the Code of Criminal Procedure, 1973. These proceedings were, however, set aside by this Court in Criminal Petition No.1367 of 2003, dated 12.04.2006. Then the fourth respondent initiated action under the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'), and passed orders on 05.05.2003 on an allegation that the petitioner

occupied an extent of Ac.0.04 cents in Survey No.203 and Ac.0.05 cents in Survey No.207 of Vidavalur Village. The petitioner filed an appeal before the Revenue Divisional Officer (fifth respondent herein). The petitioner also filed O.S.No.290 of 2003 on the file of the Court of the Principal Junior Civil Judge, Kovur, for declaration and injunction. Having regard to this, the fifth respondent closed the appeal on 24.11.2003, but subsequently, reopened the same and dismissed it. The petitioner filed W.P.No.3421 of 2004. This Court allowed the Writ Petition observing that it shall be open to the fourth respondent to take possession of the land as per the order dated 05.05.2003. The petitioner filed W.A.No.480 of 2004, which was dismissed. Thereafter, the fourth respondent again passed orders on 28.07.2004 ordering eviction of the petitioner and others. Therefore, the petitioner filed a revision before the first respondent under Section 12-A of the Act, who by order dated 12.10.2006 rejected the same giving liberty to the petitioner to file an appeal before the District Collector against the orders of the Revenue Divisional Officer. Thereafter, the Joint Collector by order dated 05.02.2007 directed the fourth respondent to remove the encroachment and restore donka.

Learned Counsel for the petitioner vehemently contends that the land is an ownership land, and it is not a Government land nor donka land warranting action under the Act. He also submits that towards western side of the petitioner's property the land of Thambireddy Subbiramireddy is situated and towards north there is donka/pathway. There is no donka in Survey Nos.203 and 207, and the existing channel in Survey Nos.203 and 207 is irrigation channel. He, therefore, submits that the respondents proceeded on a wrong premise that there was a donka poramboke, which was encroached upon by the petitioner. Secondly, he submits that when the revision petition was filed before the first respondent under Section 12-A of the Act, no notice was issued to the petitioner rejecting the same and advising to file appeal before the District Collector. He further submits that even the Joint Collector did not issue any notice nor informed the date of enquiry for filing the necessary documents and participating in the enquiry.

Learned Assistant Government Pleader submits that when the petitioner preferred a revision petition the Government declined to interfere and advised the petitioner to file appeal before the District Collector/Joint Collector within sixty days. The petitioner did not file any appeal as observed by the first respondent, and therefore, the Joint Collector was justified in ordering the Mandal Revenue Officer to

remove the encroachment and restore donka.

A perusal of the impugned order of the Mandal Revenue Officer dated 28.07.2004 would show that as per the Village accounts the land to an extent of Ac.0.15 cents in Survey No.203 and Ac.0.17 cents in Survey No.207 is classified as pathway/Cart track for agricultural fields. The same was encroached upon by the petitioner and his family members by way of irrigation channel, coconut trees and cultivation. After receiving the complaint from Prabhakar Reddy, the Mandal Revenue Officer inspected the lands on 06.09.2002 and found that the petitioner was in encroachment of land admeasuring Ac.0.04 cents in Survey No.203 and Ac.0.05 cents in Survey No.207, whereas Bezawada Krishna Reddy had encroached Ac.0.04 cents in Survey No.203 and Bezawada Sumar Kumar Reddy encroached Ac.0.05 cents in Survey No.207. Therefore, action was initiated and elaborate order was passed for removal of the encroachments. The petitioner filed appeal before the Revenue Divisional Officer, who confirmed the same. Instead of filing a revision under Section 10(2) of the Act before the Joint Collector, who is the appellate authority, curiously the petitioner invoked Section 12-A of the Act and filed a revision before the Government, who rightly refused to entertain the same and gave liberty to the petitioner to prefer an appeal (obviously a revision) before the District Collector (that is to say, the Joint Collector). Sixty days time was granted to the petitioner. The petitioner did not file any appeal, and therefore, he cannot expect a notice of enquiry or a notice of hearing. The time granted to the petitioner for filing a revision before the Joint Collector expired on 11.12.2006. The Joint Collector waited for at least two months before passing the order on 05.02.2007. For the dereliction on the part of the petitioner, the respondents cannot be blamed. As found by the original authority, the land in Survey Nos.203 and 207 is to a certain extent classified as donka/pathway, and the same is intended for use as a passage by the ryots and not for cultivation by the likes of the petitioner.

The Writ Petition is devoid of any merits and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

28.02.2007

vs